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VAT on sales made through an App Store via Irish company as intermediary

In a case concerning VAT for services supplied electronically by a German GmbH through an app store operated by an Irish company, the Supreme Tax Court held that the place of supply of such services to the customers (non-taxable persons) was in Ireland and - pending further facts still to be ascertained by the lower tax court in a second hearing - no German VAT arises.

I. Background

The case in dispute concerns the legal situation up to 31 December 2014. The plaintiff (Xyrality - a GmbH) is based in Germany and develops game applications for mobile devices. It used an app store operated by a company based in Ireland for distribution. Specifically, the issue at hand is who is considered as supplier for VAT purposes and, accordingly, where the place of supply is located.

Through so-called in-app purchases, additional content or services - such as premium features or enhancements in games - can be activated for a fee. The plaintiff developed and distributed gaming apps for mobile devices, such as smartphones. The in-app purchases were processed via the App Store which was operated by X, who was based in Ireland, through one of the payment methods provided by the end customer. The plaintiff was not identified as the supplier during the payment process. After the purchase, the end customers (who were non-taxable persons) received an order confirmation via email from X. This email included, among others, a note that the purchase had been made from the respective developer (in this case, the plaintiff) in the App Store. X settled the in-app purchases with the plaintiff on a monthly basis and retained a 30% commission for each purchase.

The plaintiff claimed the transaction to be akin to a services commission, that X was the service provider to the end customers, and that the place of supply was therefore in Ireland. The tax office believed that X is merely an intermediary and that the transactions were carried out in the name of a third party and that X merely collected the price. The Hamburg Tax Court (court of first instance) upheld that action brought by the plaintiff. According to the court, the services provided by Xyrality were not taxable in Germany as the recipient of those services was X and the place of supply of the services to the customers was in Ireland.

II. Case before the ECJ

The Supreme Tax Court sought clarification on whether Article 28 of the VAT Directive applies to situations where a German developer provides electronic services to EU non-taxable persons via an Irish app store, and whether this affects the place of supply and VAT liability.

In its decision of 9 October 2025, the ECJ confirmed the application of the rule mentioned in Art. 28 EU VAT Directive. The app store acts in its own name with regard to the in-app purchases. The order confirmations which show the name of the app developer do not indicate that the app store is acting on behalf of a third party. The place of supply was held to be in Irland following Article 44 of the VAT Directive.

Article 28 VAT Directive reads as follows: ‘Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be

deemed to have received and supplied those services himself.

Article 44 of that directive provides that „the place of supply of services to a taxable person acting as such shall be the place where that person has established his business. …“

III. Decision of the Supreme Tax Court

The Supreme Tax Court's decision was in line with the view held by the ECJ. The lower tax court had therefore correctly decided that X, and not the plaintiff, was the service provider with respect to the services rendered to the customers through in-app purchases. According to the Tax Court's findings, X was involved in the provision of the plaintiff's services through the app store and acted in its own name but on behalf of others, and, pursuant to Article 28 of the VAT Directive, this service is deemed to have been supplied to X and by X to the customers.

The lower tax court was also correct to assume that the place of supply of the plaintiff's services to X is in Ireland pursuant to Section 3a(2) of the German VAT Act and Article 44 of the VAT Directive, and that the plaintiff's relevant transactions are therefore not taxable transactions within Germany.

IV. Further investigations in second hearing

The lower tax court's decision must nevertheless be set aside for other reasons, and the case must be referred back for further proceedings and decision. The court failed to determine whether the documents in question contain the mandatory information required for an invoice under Section 14c VAT Act and whether these invoices should be regarded as having been issued by the plaintiff. Should this be the case, the tax court would have to determine to what extent the recipients of the invoices are end consumers (ECJ judgment *Finanzamt Österreich* of 1 August 2025 file No. **C-794/23**).

In this judgment, the ECJ held, with a view to an earlier judgment of 8 December 2022 (*Finanzamt Österreich* C?378/21, where VAT was invoiced incorrectly to final consumers), that Article 203 of the VAT Directive (stating that VAT shall be payable by any person who enters the VAT on an invoice) must be interpreted as meaning that a taxable person who has supplied a service and who has stated on the invoice an amount of VAT calculated on the basis of an incorrect rate is not liable, under that provision, for the part of the VAT invoiced incorrectly if there is no risk of loss of tax revenue on the ground that the recipients of that service are exclusively final consumers who do not have a right to deduct input VAT. It is therefore necessary to interpret strictly the concept of 'final consumers who do not have a right to deduct input VAT' and to consider that such a risk exists where the recipient of an incorrect invoice is a taxable person, including in the event that that person could have used the supply concerned for private purposes or for other purposes in respect of which VAT is not deductible.

Finally, The Supreme Tax Court takes it upon itself to note, that in light of the current ECJ case law it no longer maintains his previous case law that a tax liability arises under Section 14c(1) of the German VAT Act even when an invoice is issued to end consumers.

As regards the case in dispute, it was not possible to ascertain from the ECJ's decision to what extent such services were provided, and that therefore this proportion might have to be determined using an estimate (ECJ judgment of 1 August 2025 *Finanzamt Österreich* C-794/23, third answer and para. 39 et seq.).

Sources:

Supreme Tax Court, decision of 26 March 2026 V R 46/25 (XI R 10/20) published on 11 June 2026. - ECJ, judgment of 9 October 2025 **C?101/24** *Xyrality*.

Keywords

commission, electronic services